

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed June 5, 2006. At the time of the Office Action, Claims 1 and 3-10 were pending in this Application. Claims 1 and 3-10 were rejected. Applicants respectfully request reconsideration and favorable action in this case.

Objections under 37 CFR 1.83(a)

Examiner has objected to the drawings for not showing every feature of the invention specified in the Claims under 37 CFR 1.83(a). The Examiner stated that Applicants remark that Figure 1 is an “exemplary embodiment of a typical industrial automation system” leads to the conclusion that Figure 1 shows the prior art. Applicant respectfully disagrees. No such statement has been made. Figure 1 shows an exemplary embodiment of the invention including the feature of transmitting mobile program code with numeral 50. The feature of transmitting further mobile program code is shown with the connection of the actors and sensors 12-22 coupled to computer system 1. Therefore, all features are shown in Figure 1.

Rejections under 35 U.S.C. §103

Claims 1 and 3-10 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 6,529,780 issued to Soergel et al. (“Soergel”) in view of Lange et al., “Programming and Deploying Java Mobile Agents with Aglets,” dated August 1998 (“Lange”). Applicants respectfully traverse and submit the cited art combinations, even if proper, which Applicants do not concede, does not render the claimed embodiment of the invention obvious.

Claims 1 and 3-10 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 6,038,486 issued to Saitoh et al. (“Saitoh”) in view of Lange. Applicants respectfully traverse and submit the cited art combinations, even if proper, which Applicants do not concede, does not render the claimed embodiment of the invention obvious.

In order to establish a prima facie case of obviousness, the references cited by the Examiner must disclose all claimed limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580

(C.C.P.A. 1974). Furthermore, according to § 2143 of the Manual of Patent Examining Procedure, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

The Examiner stated that Soergel as well as discloses in col. 3, lines 40-47 the generation of further mobile code and transmitting the further mobile code at least to said actors and sensors within the industrial automation system. Applicant respectfully disagrees. Soergel neither discloses that sensors nor actors receive any type of code. In fact, Soergel does not contain the words actors or sensors at all. The cited passage states:

"The use of plant-neutral devices and tools allows the achievement of a universal automation system which uses plant-specific, that is to say specially developed, devices and tools only when this is unavoidable. Finally, it is proposed that the engineering centre be designed as a multi-station project engineering, design, commissioning or operational optimization office by using monitors, computer equipment and cameras, it being possible for immediate dialogue, drawing changes or software input to be supplemented or replaced by remote transmission via speech and video image."

Soergel, col. 3, lines 40-47.

This paragraph merely defines the engineering center but not the automation system per se. Thus, no statement can be found that the automation system includes actors or sensors capable of receiving the further mobile code. A sensor is a device that can, for example, measure a value, such as temperature, voltage, etc. An actor is a device that actively induces an action, such as a controllable valve, a motor etc. No such devices are either mentioned or suggested in Soergel. Because Soergel does not disclose actors and sensors that are capable

of receiving mobile code, Soergel in view of Lange cannot render the present invention obvious. Hence, Applicant respectfully disagrees with the Examiner's conclusion that Soregel discloses actors and sensors.

Similarly, Saitoh neither discloses actors or sensors. The Examiner stated that Saitoh discloses this limitation in col. 1, lines 29-44. Applicants respectfully disagrees. Applicant reviewed the Saitoh application carefully but could neither find the term "sensor" or the term "actor" in the whole description. The paragraph cited by the Examiner states:

The present invention provides a control method for a factory automation system that controls itself and effects the operations of control devices used in manufacturing devices or equipment by reading as necessary in real time (while the control devices are in operation) data in the form of files saved on a memory medium for each type of control device.

Saitoh, col. 1, lines 29-44.

Saitoh explains the term control device as:

Referring to FIG. 1, the FA (factory automation) server system according to one embodiment of the present invention is made up of: inspection machine 1 that checks manufactured products; control device 2 that exercises control over the various types of machinery and devices including manufacturing devices, gauges of, for example, flow volume or liquid measure, etc., air conditioning and lighting equipment, equipment for conveying materials, raw materials, and manufactured articles; monitoring cameras, smoke detectors, and fire inspection machines; personal computer 3; FA server 4 provided with common disk 5; and LAN 6 that connects these components together; and moreover, the FA server system is further connected by way of Internet 7 to personal computer 8 of, for example, a head office, business office, warehouse, separate factory, cooperating company, customer, or supplier; personal computer 9 of a maker of machinery or equipment; and an arbitrary personal computer 10.

Saitoh, col. 2, lines 38-55.

Thus, a control device is a device that exercises control over sensors and actors. However, nowhere in Saitoh can any statement be found that these sensors and actors are capable of receiving movable code. Hence, Applicant respectfully disagrees with the Examiner's conclusion that Saitoh discloses actors and sensors as defined in the present independent claim.

Applicants respectfully submit that the dependent Claims are allowable at least to the extent of the independent Claim to which they refer, respectively. Thus, Applicants respectfully request reconsideration and allowance of the dependent Claims. Applicants reserve the right to make further arguments regarding the Examiner's rejections under 35 U.S.C. §103(a), if necessary, and do not concede that the Examiner's proposed combinations are proper.

CONCLUSION

Applicants have made an earnest effort to place this case in condition for allowance in light of the amendments and remarks set forth above. Applicants respectfully request reconsideration of the pending claims.

Applicants believe there are no fees due at this time, however, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-2148 of Baker Botts L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Andreas Grubert at 512.322.2545.

Respectfully submitted,
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